

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1880.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill S. 1576.]

*The Committee on Pensions, to whom was referred the petition of Benedict J. O. Driscoll, praying that a pension may be granted him as captain, have carefully examined the same, and report:*

That the petitioner, while serving as second lieutenant of Company C, Eighty-eighth Regiment New York Volunteers, was, on the 16th day of June, 1864, wounded in action, and in consequence of this wound his leg was amputated. For this disability he is now receiving a pension as second lieutenant. His claim that he is entitled to a captain's pension is based upon the following facts, set forth in his petition:

He first enlisted as private in Company C, Eighty-eighth Regiment New York Volunteers, September 17, 1861. He re-enlisted in December, 1863, for three years. While on veteran furlough, he was authorized by the governor of New York to raise and organize a company for said regiment. He alleges, and the committee believe truly, that to enable him to act as recruiting officer he was conditionally mustered as second lieutenant, with the promise that if he raised such company such conditional muster should be confirmed, and, further, that he should be commissioned as captain whenever the opportunity occurred.

A company was raised by the petitioner, and with it he rejoined his regiment in the field at Cold Harbor, Va., on the 2d day of June, 1864. He commanded said company in action on the 3d of June, 1864, and in all the subsequent actions occurring between Cold Harbor and Petersburg, until the 14th of the same month, when he lost his leg in the action before Petersburg.

On the 9th of June, 1864, the colonel of his regiment wrote the governor of the State of New York recommending that the petitioner be commissioned as captain, in pursuance of which he was commissioned a captain in said regiment by Governor Seymour, his commission dating the 13th day of July, 1864.

This commission having been dated after his loss of a leg, his application to be mustered in as captain was refused, unless he should return to his command for duty. This he was unable to do, and therefore was never mustered as captain.

The committee are of opinion that in equity the petitioner is entitled to be pensioned as a captain, and therefore recommend the passage of the accompanying bill for his relief.

